
FEDERAL ENERGY REGULATORY COMMISSION



WASHINGTON, D.C. 20426

NEWS RELEASE

NEWS MEDIA CONTACT:

Barbara A. Connors
(202) 502-8680

FOR IMMEDIATE RELEASE

July 8, 2004
Docket Nos. ER96-2495, et al.

COMMISSION RETAINS SCREENS ADOPTED IN APRIL, CLARIFIES INTERIM GENERATION MARKET POWER POLICY

The Federal Energy Regulatory Commission today stood by its interim market power screens adopted in April, but sought to clarify implementation issues regarding the screens and the associated market-based rates process.

In addressing the rehearing requests, the Commission said that its earlier determination provides a sound basis to assess whether an applicant for market-based rates has the ability to exercise market power subject to the opportunity of both the applicant and intervenors to provide specific evidence rebutting the outcome of the indicative screens. The Commission noted that it has provided extensive opportunity for all parties to inform the Commission of their views, through multiple rounds of comments in addition to a two-day technical conference.

Many commenters argued that the screens were too strict, the Commission noted, while many others argued they should be tightened. Today's order balances these conflicting views and adopts well-established economic methods.

Chairman Pat Wood, III said: "Market-based rate authority is not a right. The Federal Power Act allows us to grant this authority only if public utilities have demonstrated that they lack, or have adequately mitigated, market power. Today's order balances the competing views of a broad spectrum of commenters."

The April 14 order, issued in response to rehearing requests on a proposed November 2001 Supply Margin Assessment (SMA) proposal, replaced SMA with two market power screens to assess generation market power and measures to mitigate market power. The screens were adopted on an interim basis only, with the Commission initiating a generic rulemaking proceeding and a comprehensive generic review of

R-04-27

(more)

(2)

market-based rates, generation and transmission market power, along with other barriers to market entry, affiliate abuse and reciprocal dealing.

The first screen is a *pivotal supplier* analysis based on a control area's annual peak demand. The hours leading up to that point is the most likely time that an applicant will be a pivotal supplier, the Commission noted.

The second screen focuses on a *market share* analysis applied on a seasonal basis. Both screens consider native load obligations, operating reserve requirements and other commitments of the applicants. If applicants pass both screens, it is presumed that generation market power does not exist.

In denying rehearing of the two screens adopted in the April 14 order, the Commission said the screens "provide a fair assessment of generation market power" and will indicate the potential for generation market power where it may exist. The Commission explained that the pivotal supplier analysis evaluates the applicant in relation to market supply and demand; the market share analysis evaluates applicants' size in relation to others in the market. Taken together, the Commission is able to measure both peak and off peak market power and the ability to exercise market power both unilaterally and in interaction with other sellers.

Failure of either screen sets up a presumption that generation market power exists and the applicant for market-based rates may rebut the presumption with additional information through the Delivered Price Test, or historical data. The Delivered Price Test is a well-established analysis that has been used in over 100 cases for evaluating market power effects of utility mergers. An applicant may also choose to file a mitigation proposal tailored to its particular circumstances that would eliminate the ability to exercise market power, or adopt cost-based rates.

AEP Power Marketing, et al., Entergy Services, Inc., and Southern Company Energy Marketing, L.P., the subject of the original SMA order in November 2001, have 30 days to submit their revised generation market power analyses.